

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

CHARLES BRAINARD,

Plaintiff,

v.

Case No. 07 CIV 8535 (LBS)

KENYON & KENYON LLP, the KENYON & KENYON PENSION PLAN, and GEORGE BADENOCH, MICHAEL LOUGHNANE, and ROBERT TOBIN (all individuals),

Defendants.

NOTICE OF DEFENDANTS' MOTION TO

**(1) DISMISS COUNTS I & II OF THE COMPLAINT OR, IN THE ALTERNATIVE,
(2) STAY COUNT I AND REFER COUNT II TO ARBITRATION**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law in Support of Defendants' Motion to (1) Dismiss Counts I & II of the Complaint or, in the alternative, (2) Stay Count I and Refer Count II to Arbitration, Defendants, Kenyon & Kenyon LLP, the Kenyon & Kenyon Pension Plan, and George Badenoch, Michael Loughnane, and Robert Tobin, will bring their Motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to be heard before the Honorable Leonard B. Sand, United States District Judge, at the Courthouse for the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 15-A, New York, NY 10007 on Thursday, January 10, 2008, at 2:15 p.m., or as soon thereafter as counsel may be heard.

**DEFENDANTS' MOTION TO
(1) DISMISS COUNTS I & II OF THE COMPLAINT OR, IN THE ALTERNATIVE,
(2) STAY COUNT I AND REFER COUNT II TO ARBITRATION**

Defendants, Kenyon & Kenyon LLP, the Kenyon & Kenyon Pension Plan, and George Badenoch, Michael Loughnane, and Robert Tobin, move pursuant to Federal Rules 12(b)(1) and 12(b)(6) to dismiss Counts I and II of the Complaint as asserted by plaintiff, Charles Brainard ("Brainard"). In the alternative, Kenyon & Kenyon requests, pursuant to the Federal Arbitration Act, that this Court stay all claims of this action in favor of arbitration because Brainard and the Firm are parties to a mandatory arbitration agreement that is applicable to the key issues raised in this case. The Plan and the Fiduciaries join in that request. In support of this Motion, Defendants rely on the accompanying Memorandum of Law.

Respectfully submitted,

Dated: December 10, 2007

/s/ Kay Kyungsun Yu
Kay Kyungsun Yu (KY 7807)
PEPPER HAMILTON LLP
The New York Times Building
37th Floor
620 Eighth Avenue
New York, NY 10018-1405
Tel.: 215.981.4188
Fax: 215.689.4515
E-mail: yukay@pepperlaw.com

Counsel for Defendants, Kenyon & Kenyon LLP; the Kenyon & Kenyon Pension Plan; George Badenoch; Michael Loughnane; and Robert Tobin

CERTIFICATE OF SERVICE

I, Kay Kyungsun Yu, hereby certify that on December 10, 2007, the foregoing Notice of Defendants' Motion to (1) Dismiss Counts I & II of the Complaint or, in the alternative, (2) Stay Count I and Refer Count II to Arbitration was filed electronically and is available for viewing and downloading from the ECF system. In addition, the foregoing was served via First-Class Mail upon the following:

Debra L. Raskin
James Wasserman
Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway, Suite 800
New York, NY 10036

/s/ Kay Kyungsun Yu
Kay Kyungsun Yu